



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ketesdi v. Dilworth Quality Homes Inc.*, 2022 BCCRT 945

B E T W E E N :

ZSOLT KETESDI

APPLICANT

A N D :

DILWORTH QUALITY HOMES INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about a fireplace installation as part of a new home build.
2. The applicant, Zsolt Ketesdi, claims against his home builder, the respondent Dilworth Quality Homes Inc. (Dilworth). Mr. Ketesdi says Dilworth agreed to install the home's

electric fireplace in a specific way but failed to do so. Mr. Ketesdi claims \$4,106.50 as damages based on the estimated cost to reinstall the fireplace and surrounding stone feature according to what he says was the parties' agreement.

3. Dilworth says it installed the fireplace as close to Mr. Ketesdi's request as reasonably possible. It says Mr. Ketesdi requested something other than the 3 installation options available from the fireplace's manufacturer, Napoleon. In essence, Dilworth says Mr. Ketesdi's dissatisfaction with the installation is the result of his specific request for an unusual installation.
4. Mr. Ketesdi is self-represented. Dilworth is represented by an insurance adjuster.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
7. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

9. The issue in this dispute is whether Dilworth's fireplace installation breached the parties' contract, and if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mr. Ketesdi must prove his claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
11. There is no copy of the parties' home-building contract in evidence, but it is undisputed that Dilworth built Mr. Ketesdi's home and that the home was to include an electric fireplace set in a stone surrounding wall.
12. Mr. Ketesdi says Dilworth failed to install the fireplace in the way the parties specifically agreed in a February 10, 2021 email exchange. In that exchange, Mr. Ketesdi emailed KD, who was identified in his email signature as an "estimator / project coordinator" for Dilworth. It is undisputed that KD had the authority to bind Dilworth. At the time, the home was under construction.
13. As this dispute turns largely on the email, I reproduce the important wording here. Mr. Ketesdi said, "I would like to find out how we can recess the electric fireplace so it doesn't sit on top of the brick wall." He also said he would like it to look like the gas fireplace in a photo he attached. He asked KD to let him know how this could be done. KD replied the same day that it "shouldn't be an issue to do it like the picture". He attached a "fireplace spec sheet" – I return to this below – and said, "we would install it as a recessed installation so the stone can be installed around the unit."

14. It is undisputed that Dilworth installed the fireplace on August 30, 2021, after Mr. Ketesdi took possession of the home. Immediately afterward, Mr. Ketesdi complained to Dilworth that it did not install the fireplace as agreed. By that time, KD was no longer with Dilworth. Dilworth told Mr. Ketesdi that it would not make changes to the fireplace installation.
15. Mr. Ketesdi's objection to the installation is that the stone of the fireplace surround did not come up to the edge of the fireplace, and Dilworth installed a black tile trim to make up the difference.
16. Dilworth's position is that the fireplace was installed exactly as Mr. Ketesdi requested. The fireplace, including the glass face or flange was recessed within the opening rather than proud of the stone surround. Dilworth says this meant that trim had to be installed to match Mr. Ketesdi's example photo and to address the required minimum clearance of combustible materials. Dilworth provided no supporting evidence about minimum clearance of combustible materials, so I give that submission little weight. The Napoleon installation manual only provides a minimum 4-inch clearance to the mantel. Dilworth does not explain whether the stone surround was combustible. As for the example photo Mr. Ketesdi provided, I find it does not show any gap between the flange and the surrounding stone.
17. It is undisputed that the fireplace was on backorder and Dilworth completed the stone surround before installing the fireplace. Based on KD's email that the fireplace would be recessed so the stone could be "installed around the unit," I find on a balance of probabilities that a recessed installation as the parties agreed meant installing the fireplace first and then finishing the stone surround after the fireplace was installed. I find that Dilworth did not do this.
18. Dilworth did not explain what the "spec sheet" document was that KD's email referred to, but I find it was likely the 4-page "specifications" document Napoleon provided that included an installation overview. The overview said there were 3 installation methods, one of which was fully recessed, and required no side or top trims or panels. Dilworth says the fully recessed option still would have left the flange proud of the

stone surround. However, I find the fully recessed option was what Mr. Ketesdi wanted and what Dilworth agreed to provide.

19. Mr. Ketesdi relies on an email from a Napoleon employee. The employee reviewed photos Mr. Ketesdi provided and confirmed that the fireplace “can be fully recessed into the wall having your finishing material right up to the finishing flange.” The Napoleon employee confirmed that “you do not need that black area that you currently have around the fireplace.” The Napoleon employee also said they provided a picture of what the installation should look like to “your installer”, which I infer refers to Dilworth or one of its subcontractors, and identified specific sections of the manual for the installer to review.
20. The Napoleon employee’s qualifications are not provided, so I find that their email evidence does not meet the CRT’s rule 8.3 requirement of expert evidence. However, Dilworth does not challenge this evidence and I find it reliable given that Napoleon is the fireplace’s manufacturer. I give the email significant weight, and based on it, I find that Dilworth could have installed the fireplace recessed as agreed without having the tiled gap. Dilworth provided no independent evidence to the contrary.
21. There are 2 other pieces of evidence that I find show Dilworth could have installed the fireplace fully recessed without having a gap. The first is a photo from a neighbouring house Dilworth built showing a similar stone feature going up to the edge of a similar electric fireplace. Dilworth did not address this evidence. The second is a copy of that neighbour’s “fireplace design sketch approval form” that Dilworth had the neighbour sign showing how their fireplace would be installed in their home. Mr. Ketesdi says he was not given the opportunity to review any similar form, which he says may have avoided the installation error. Dilworth did not address this evidence either. I find both pieces of evidence support Mr. Ketesdi’s claim that Dilworth or its contractor made an installation error in failing to recess the fireplace according to Napoleon’s specifications.

22. Given all the above, I find Dilworth breached the parties' agreement by failing to install Mr. Ketesdi's fireplace as a recessed installation according to the Napoleon manual without a gap between the fireplace flange and the stone surround.
23. The usual method of assessing damages for breach of contract is to try to place the non-breaching party in the position they would be had the contract been performed. Mr. Ketesdi provided a quote from a mason to remove 12-18 inches of stone from around the fireplace and reinstall new matching stone that butts up to the fireplace, for \$3,500 plus GST. Dilworth did not challenge this estimate and I accept it as the best available evidence of the cost of making Mr. Ketesdi's fireplace what the parties agreed. Mr. Ketesdi also seeks \$200 plus GST for paint touch-ups he says will be required on the walls to either side of the stone feature. I find he has not sufficiently explained why paint touch-ups will be necessary, so I do not allow anything for paint touch-ups. Mr. Ketesdi also seeks \$210 plus GST for cleaning as he says the work will create a lot of dust. The estimate is based on 6 hours of cleaning, which is not explained. On a judgment basis, I find 2 hours is reasonable, so I allow \$70 plus GST.
24. In total, I find Mr. Ketesdi's damages are \$3,748.50 (\$3,570 + GST).
25. Mr. Ketesdi says he does not wish to claim interest, so I do not award interest.
26. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. Ketesdi was substantially successful in this dispute, so I find he is entitled to reimbursement of \$175 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

27. Within 14 days of the date of this order, I order Dilworth to pay Mr. Ketesdi a total of \$3,923.50, broken down as follows:
 - a. \$3,748.50 in damages, and

b. \$175.00 in CRT fees.

28. Mr. Ketesdi is entitled to post-judgment interest, as applicable.

29. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Micah Carmody, Tribunal Member